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Greenville Rancheria: Transferring Contract Funds from
CRIHB Contract to Greenville Contract

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You recently asked us for an opinion as to whether the California Area Office (CAO) may legally deobligate contract funds from a Pub. L. 93-638 contract with the California Rural Indian Health Board, Inc. (CRIHB) and reobligate those funds to an ongoing Pub. L. 93-638 contract with the Greenville Rancheria. Because the appropriations used to fund the CRIHB contract are "no-year" funds, you may deobligate those funds and reobligate them to the Greenville contract.

Background

The CAO contracts with CRIHB under Pub. L. 93-638 for the provision of health services to a number of California tribes and other eligible California Indians. CRIHB, however, does not provide direct care services itself, but instead subcontracts with various tribal organizations to provide those direct care health services.

On September 30, 1993, the CAO modified the CRIHB contract, Contract No. 235-92-0003, to add approximately \$1 million in funding for CRIHB to provide services to members of the Greenville Rancheria and other eligible Indians in Greenville's service area for one year. CRIHB, in turn, entered into a subcontract with the Greenville Rancheria Tribal Health Program to provide direct care services to the beneficiary population. Subsequently, on September 30, 1994, the CAO and CRIHB agreed to an extension of the Greenville portion of CRIHB's contract through September 29, 1995, but the CAO was only willing to provide funding at a reduced level, based on data showing that the Greenville program was serving far fewer patients than had been originally anticipated. CRIHB and Greenville objected to this reduction in funding, and after lengthy discussions, the CAO, in August 1995, added approximately \$200,000 in FY 1995 funds to Contract No. 235-92-0003 for services to Greenville.

Prior to the expiration of the term of the contract, the Greenville Rancheria decided it no longer wanted CRIHB to serve as the primary contractor for the tribe, and it withdrew its resolution of support for CRIHB, effective September 30, 1995. On September 30, the Greenville Rancheria Tribal Health Program

entered into a separate Pub. L. 93-638 direct care contract with the CAO to provide health services to the members of the Greenville Rancheria and other eligible Indians in the Greenville service area.

Although, as a result of Greenville's decision, CRIHB no longer serves the Greenville Rancheria, CRIHB Contract 235-92-0035 currently contains a balance of approximately \$132,000, representing the remainder of the \$200,000 in FY 1995 funds that were added to the contract in August 1995. While the Greenville Rancheria had asked CRIHB, prior to September 30, 1995, to request that the CAO transfer these excess funds from the CRIHB contract to the new Greenville contract, CRIHB did not send its request to the CAO until October 3, 1995, after the Greenville contract had already been signed.

You have now asked us whether, despite the fact that the funds at issue are FY 1995 funds, it is possible to deobligate the CRIHB contract in the amount requested, and reobligate those funds to the current Greenville contract. For the reasons stated below, it is our opinion that such a deobligation-reobligation of funds would comport with federal appropriations law.

Discussion

Generally, contract and grant funds are awarded on a fiscal year basis, and contractors or grantees receiving fiscal year funds must obligate the funds during the fiscal year in which they are received or lose their rights to the funds. See B-211323 (January 3, 1984), 1984 WL 43695, 43696. While an agency may deobligate and reobligate such contract or grant funds during the original period of availability -- normally the fiscal year in which they are awarded -- funds deobligated after the expiration of the original period of obligational availability are not available for new obligations. Principles of Federal Appropriations Law, 7-51 (2nd ed. 1992).¹

However, Congress may designate funds as "no-year" funds rather than fiscal year funds. These "no-year" funds, unlike fiscal year funds, remain available until they are ultimately expended, and may, therefore, be deobligated and reobligated in years subsequent to the year in which they are appropriated. See

¹ The definition of the term "deobligation" is a "downward adjustment of previously recorded obligations." Principles of Federal Appropriations Law, 7-51 (quoting GAO, Glossary of Terms Used in the Federal Budget Process, PAD-81-27, at 56). While a proper and unliquidated obligation should normally not be deobligated, see *id.* at 7-52, it is common to deobligate contract funds in cases of cost underruns, as is the case here. See *id.* at 7-51; B-207433 (September 16, 1983).

Principles of Federal Appropriations Law, Vol. 1, Chap. 5, Part D, § 5 (2nd ed. 1991), 1991 WL 645782; B-211323 (January 3, 1984), 1984 WL 43695, 43696; 40 Comp. Gen. 694, 697 (1961) (no-year funds recovered as a result of cost reductions, regardless of the time of recovery, are to be treated as unobligated balances available for expenditure in the same manner and for the same purposes as the original appropriation).

Generally, the language used to identify no-year funds is "to remain available until expended." See B-211323 (January 3, 1984), 1984 WL 43695, 43696; 40 Comp. Gen. 694, 696 (1961). The Department of Interior and Related Agencies Appropriations Act of 1995, Pub. L. 103-332, 108 Stat. 2499, which authorized IHS's appropriations for FY 1995, contains language indicating that the FY 1995 funds obligated to the CRIHB contract to serve the Greenville Rancheria are no-year funds.² That Act states that

funds made available to tribes and tribal organizations through contracts, grant agreements, or any other agreements or compacts authorized by the [ISDA], shall be deemed to be obligated at the time of the grant or contract award and thereafter shall remain available to the tribe or tribal organization without fiscal year limitation

(Emphasis added.) Clearly, by designating FY 1995 funds appropriated for tribal 638 contracts as "remain[ing] available . . . without fiscal year limitation," Congress established those funds as "no-year" funds not subject to the normal fiscal year limitation on deobligations and reobligations.

Since the Interior and Related Agencies Appropriations Act of

² While it is the annual appropriations language, not the statutory language, that ultimately determines the status of appropriated funds, see 58 Comp. Gen. 321, 323 (1979) (it is the appropriations act, not the underlying statute, which "controls as it is the latest expression of congressional intent on the availability of appropriations"), we should note that section 8 of the ISDA, 25 U.S.C. § 13a, also contains language allowing for obligations or expenditures of self-determination contract funds beyond the fiscal year in which they are appropriated. That section provides that such funds can remain available for the fiscal year immediately succeeding the fiscal year in which the funds were appropriated. Since, as we noted above, the funds at issue here were appropriated in FY 1995, section 8 would authorize the use of those funds in FY 1996, and those funds could, therefore, be deobligated and reobligated in FY 1996 pursuant to the authority of section 8.

1995 has made the funds at issue here "no-year" funds, the "period of availability" for those funds extends indefinitely. Thus, the agency may recapture those funds -- by deobligating them from the CRIHB contract -- and reobligate them in future fiscal years, so long as the reobligation is done in the same manner and for the same purposes as the original appropriation. See 40 Comp. Gen. 694, 697 (1961). Since the CAO intends to reobligate the funds in question by putting them into the Greenville contract -- like the CRIHB contract a Pub. L. 93-638 contract serving the same beneficiary population as the CRIHB contract previously served -- this intended deobligation-reobligation of the CRIHB funds would be authorized under the law.³

If you have any questions or need any further assistance in this matter, please feel free to contact me at (415) 556-1559.

cc: IHS/DLR

³ We should note that, while several previous OGC opinions have suggested that deobligation-reobligation authority is generally not available for 638 contracts beyond the fiscal year in which the funds are appropriated, those opinions appear not to have addressed the "no-year" fund nature of IHS's appropriations for 638 contracts. See June 30, 1993 Opinion from OGC to Director, IHS Headquarters Operations entitled "Questions Regarding the Transition from Title I 'Contracts' to Title III 'Compacts,'" and January 24, 1995 OGC Opinion to Chief, Policy Review Branch, IHS Division of Legislation and Regulations entitled "Update of June 30, 1993 Legal Opinion - Request for Opinion (RFO) 94-137."